IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

MFA.No. 256 of 2001(B)

O.P(MV).NO.1421/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, ALAPPUZHA.
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APPELLANT/PETITIONER:

MR. MADHUSOODANAN,
S/O. GOPALAN,
OOTTUTHARA,
KANJIRAMCHIRA,
ALAPPUZHA.

BY ADV. SRI.A.K.ALEX.

RESPONDENTS/RESPONDENTS:
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1. **MR. AYYAPPADASAN PILLAI,**
   SON OF RAMAKRISHNA PILLAI,
   ADMINISTRATIVE ASSISTANT,
   DISTRICT POLICE OFFICE,
   ALAPPUZHA.

2. **THE DISTRICT MANAGER,**
   DISTRICT INSURANCE OFFICE,
   THE KERALA STATE INSURANCE
   DEPARTMENT, ALAPPUZHA.

BY ADV. SRI.V.L.SHENOY,
GOVERNMENT PLEADER SRI. NOBLE MATHEW.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 29/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No. 256 of 2001

JUDGMENT

Koshy, J.

The appellant, who was a Gate Keeper of Railways, met with a motor accident on 26.11.1994 due to the negligence of the driver of the vehicle insured with the second respondent Insurance Department. As a result of the accident, he suffered fracture of lateral tibial condyle (R). Exhibit A7 is the copy of the treatment certificate. Exhibit A1 series are the three OP tickets issued from the Medical College Hospital, Alappuzha. Exhibit A2 is the disability certificate issued by the Ortho Surgeon, Medical College Hospital, Alappuzha. Exhibit A2 reads as follows:

> "as examined today patient has pain and stiffness of (R) knee. On clinical

> examination there is terminal 15 limitation of flexion of knee and tenderness of joint line. X-ray shows old depressed fracture of the condyle with early osteoarthritic changes for the above, his permanent disability is 15%."

His monthly income was Rs.3000/-. He claimed a total compensation of Rs.1,60,454/-. The Tribunal awarded only Rs.64,354/-. Only the quantum of compensation is disputed in this appeal.

2. The appellant was aged 43 at the time of the accident. It is his contention that if the compensation was calculated on a multiplier method, he would have received more than Rupees one lakh for loss of earning capacity and disability. But, towards permanent disability, loss of earning capacity and loss of amenities in life only Rs.30,000/- was granted by the Tribunal. It is the case of the appellant that the compensation should be awarded taking 15 as the multiplier and Rs.3,000/- as the multiplicand. It is true that the

claimant suffered serious pain and he has to live with the difficulties till the end of this life. But, at the same time, as a result of the accident, he did not lose his job. It is true that for pain and sufferings the Tribunal granted Rs.20,354/- and towards medical and other expenses Rs.4,000/- was also granted. The Railways did not dismiss him. It allowed him to work. He has to do the work with the difficulties and after retirement also he has to continue with the difficulties. Getting of another job after retirement has also become impossible. In these circumstances, we are of the view that for permanent disability of 15%, loss of earning capacity and loss of amenities in life, altogether Rs.40,000/- ought to have been granted. So, he will get an amount of Rs.10,000/- in addition to the compensation awarded by the Tribunal. While reimbursing the medical expenses, no amount was granted for transportation, by-standers expenses and extra nourishment. We also

note that only the actual medical bills were reimbursed, even though the treatment in the hospital continued for 247 days, for which much expenses would have been incurred. So, we are of the opinion that altogether an amount of Rs.5,000/- can be granted towards all these expenses. Thus, the above amount of Rs.15,000/- shall be deposited by the second respondent with 7% interest from the date of application till its deposit over and above the compensation awarded by the Tribunal.

The appeal is allowed in part.

(J.B.Koshy, Judge)

29th June, 2007

(K.P.Balachandran, Judge)

tkv

J.B.Koshy & K.P.Balachandran, JJ.

M.F.A.No.256 of 2001

JUDGMENT

29th June, 2007